

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 621/96

Transfer Application No.

Date of Decision 13-12-96

A.R.Shukla

Petitioner/s

Shri G.K.Masand along with Mr.R.C.Kotiankar
Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri S.C.Dhavan

Advocate for
the Respondents

CORAM :

Hon'ble Shri. P.P.Srivastava, Member (A)

Hon'ble Shri.

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

(P.P.SRIVASTAVA)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

QA.NO. 621/96

this the 13th day of December 1996

CORAM: Hon'ble Shri P.P.Srivastava, Member (A)

A.R.Shukla
Deputy Station Manager,
Central Railway,
Ahmadnagar.

By Advocate Shri G.K.Masand
along with Shri R.C.Kotiankar

... Applicant

V/S.

1. Union of India
through Secretary
to Govt. of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. Chairman, Railway Board,
Ministry of Railways,
Govt. of India,
Rail Bhavan, New Delhi.
3. Divisional Railway Manager,
Central Railway, Solapur,
Maharashtra.
4. Shri P.K.Agarwal
Divisional Operations Manager,
Central Railway, Solapur,
Maharashtra.

By Advocate Shri S.C.Dhavan
C.G.S.C.

... Respondents

O R D E R

(Per: Shri P.P.Srivastava, Member (A))

The applicant was working at Ahmadnagar
in the Grade of Rs.2000-3200 and has been transferred
from Ahmadnagar to Jath Road vide the Administration's
letter dated 15.4.1996. The applicant was posted
at Ahmadnagar on promotion in December, 1995 and

therefore the present order of transfer has been made within only a few months of his posting at Ahmadnagar. The applicant has challenged the transfer order on the ground that the transfer has been made with malafide intentions by the Divisional Operations Manager Mr.P.K.Agarwal.

2. The applicant has brought out in his written statement that ^{on} 18.3.1996 while he was on duty at Ahmadnagar, he had telephonic conversation with Mr.Agarwal, DOM wherein DOM got annoyed with him and used unparliamentary words and abused him on telephone. The applicant told him not to abuse him on telephone and after this exchange the DOM ordered Station Master, Ahmadnagar on 21.3.1996 that the applicant should not be taken on duty. The applicant has further brought out that the DOM Mr.Agarwal had a grudge against him because in the meeting held on 22.12.1995 the applicant had spoken freely against the working and unsafe working. This speech of the applicant was not liked by the DOM Mr.Agarwal according to the applicant.

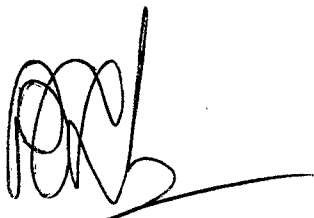
3. The applicant has further brought out that he has made a representation against this transfer to the Respondent No. 3, i.e. Divisional Railway Manager dated 17.4.1996 but he has not



received the reply for the same. The learned counsel for the applicant has argued that the transfer of the applicant is solely on the intervention of Mr. Agarwal, DOM and is not in any of administrative interest and is passed in colourable exercise of power.

4. The Learned counsel for the respondents on the other hand has submitted that the order of transfer of the applicant was required in the administrative interest and the transfer order which is under challenge has 11 transfers and is not only meant for the applicant. The learned counsel for the respondents has submitted that a proposal for these transfers is requested consequential upon a refusal of two persons for promotion by the DOM. In this proposal, it was also proposed to transfer one post in Gr.Rs.2000-3200 to Jath Road for the reasons put-in in the remarks in the proposal.

5. The learned counsel for the respondents has further argued that the order of the transfer has the approval of Additional Divisional Railway Manager and has not been ordered by the DOM Mr. Agarwal against whom the applicant has levied charges of mala fide intentions.



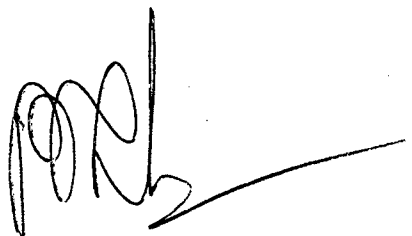
6. The Learned counsel for the respondents has also argued that the applicant has not made Mr. Agarwal as Party by name and therefore any allegations made against the officer concerned in individual capacity cannot be taken into account. It is seen from the Noting dated 12.9.1996 that the applicant has sought permission for amending the OA. and the learned counsel for the applicant has mentioned that it was for the purpose of making Mr. Agarwal Party by name. It is seen that the applicant has not served the copy of the OA. on Mr. Agarwal personally.

7. The learned counsel for the respondents has also mentioned that Mr. Agarwal is no longer Divisional Operations Manager, Solapur who has been impleaded as Respondent No. 4 in the OA. Therefore, by adding the name of Mr. Agarwal against the designation of Respondent No. 4, the service cannot be treated as having been completed for the purpose of impleading Mr. P.K. Agarwal. The learned counsel for the respondents has also submitted that the applicant should have moved an M.P. after obtaining the liberty from the Court on 12.9.1996 to implead Mr. P.K. Agarwal and should have served a copy on him. The Learned



counsel for the respondents has, therefore, argued that any material which has been placed by the applicant against Mr.P.K.Agarwal cannot be taken into account unless Mr.P.K.Agarwal is given a chance to have his say in the matter.

8. After considering the arguments of both the counsels and perusing the material on record, I am of the opinion that it was incumbent on the part of the applicant to implead Mr.P.K.Agarwal, DOM by name which has not been done in this case. The least which is expected for proving the charge of malafide is that the person against whom the charge of malafide has been levied should be given a chance to explain his position, which has not been done in this case. It is also seen that the order of transfer has been approved by Additional Divisional Railway Manager and therefore it cannot be said that the order has been issued by Mr.Agarwal, DOM. The argument of the learned counsel for the applicant that the approval by the Additional D.R.M. is a formality and, in fact, Mr.Agarwal is the instrument for transfer and that the applicant cannot be borne out by any evidence on record and this argument of learned counsel for the applicant, therefore, cannot be accepted.



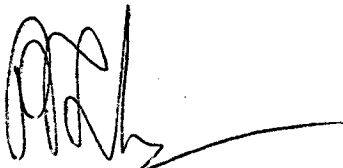
9. The Hon'ble Supreme Court has laid down the law in connection with proving malafide intentions in E.P.Royappa vs. State of Tamil Nadu & Anr., AIR 1974 SC 555. In Para 92 the Hon'ble Supreme Court has held as under :-

"92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility."

In dealing with the facts of that case, the Hon'ble Supreme Court has described the details of evidence which have been brought out to show malafide intentions. However, at the end of the judgement the Hon'ble Supreme Court in Para 93 has observed as under :-

" These and a few other circumstances do create suspicion but suspicion cannot take the place of proof and, as pointed out above, proof needed here is high degree of proof. We cannot say that evidence generating judicial certitude in upholding the plea of mala fides has been placed before us in the present case."

10. This being the law on the question of mala fides, I have no hesitation in saying that even though there has been some suspicion, that transfer of the applicant might have been made at the instance of Mr. Agarwal, DOM but in the



absence of any reliable proof to prove the mala fide intentions on the part of Mr.P.K. Agarwal, the contention of the applicant cannot be upheld, moreso when the applicant has failed to implead Mr.P.K.Agarwal in person as one of the party respondent.

11. I, therefore, reject the contention of the applicant that his transfer is as a result of malafides on the part of Mr.P.K. Agarwal, DOM.

12. The OA. is, accordingly, dismissed with no order as to costs.



(P.P.SRIVASTAVA)
MEMBER (A)

mrj.